



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0711]

RIN 1625-AA09

Drawbridge Operation Regulation; Raccoon Creek, Bridgeport, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the U. S. Route 130 lift bridge over Raccoon Creek at mile marker 1.8 in Bridgeport, NJ. The new rule will change the time of year that the bridge opens on signal. For the months that no longer open on signal, the bridge will open with four hours advanced notice.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0711. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also

visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mrs. Jessica Shea, Fifth Coast Guard District Bridge Administration Division, Coast Guard; telephone 757-398-6422, e-mail jessica.c.shea2@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
NJDOT	New Jersey Department of Transportation
§	Section Symbol
U.S.C.	United States Code

A. Regulatory History and Information

On October 28, 2013, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Raccoon Creek, Bridgeport, NJ in the Federal Register (78 FR

64189). We received two comments on the proposed rule. On May 29, 2014, we published a notice to reopen the comment period in the Federal Register (79 FR 30781). No comments were made in response to the May 29, 2014 notice. No public meeting was requested, and none was held.

B. Basis and Purpose

The bridge owner, NJDOT, requested a change in the operation regulation for the U. S. Route 130 bridge, mile 1.8, across Raccoon Creek. The majority of vessels that use this waterway are recreational boats that travel during the summer and fall months of May through October. The current operating schedule requires openings on signal from 7 a.m. to 11 p.m. between the months of March through November and a 4 hour advance notice at all other times. NJDOT provided the Coast Guard with the bridge tender logs to illustrate the marine traffic patterns on Raccoon Creek. Based on the information provided by the bridge tenders, there have been very few requests requiring openings between March 1 through April 30 and November 1 through November 30 during the 7 a.m. to 11 p.m. time period. (See Table A)

Table A

BRIDGE OPENINGS FOR JANUARY 2007 - JUNE 2013

Month	2013	2012	2011	2010	2009	2008	2007
January	8	0	0	2	0	2	0
February	8	0	0	1	0	0	0
March	7	0	0	5	0	0	0
April	22	5	0	10	15	13	2

May	39	12	13	33	14	20	17
June	52	27	33	42	33	38	40
July		36	19	30	81	49	65
August		27	14	21	59	38	57
September		34	8	31	59	45	56
October		12	12	4	26	17	10
November		8	14	1	2	10	1
December		1	4	0	6	0	2
Total		162	117	180	295	232	250

The vertical clearance of the vertical lift bridge is 5 feet above mean high water in the closed position and 64 feet above mean high water in the open position. In order to align the operating schedule with the observed marine traffic, this rule changes the open on demand requirement for March 1 through April 30 and November 1 through November 30 to require a 4 hour advance notice.

C. Discussion of Comments, Changes and the Final Rule

Two comments were made in response to the Notice of Proposed Rulemaking published on October 28, 2013 (78 FR 64189). These comments were posted to the Docket USCG-2013-0711. The first comment was regarding the rationale behind the proposed change. The second comment was regarding the history of marine transits on the waterway during the month of April. We addressed both of these comments in the notice that was published in the Federal Register on May 29, 2014 (79 FR 30781). The Coast Guard did not change the proposed regulation in response to either of the comments.

Under this rule, if vessels require an opening during any

time of the year outside the summer and fall season (May through October) or between the hours of 11 p.m. and 7 a.m., the bridge will open with a 4 hour advanced notice. The impact to vessels of the proposed change to the regulation is that vessels which require openings during March, April or November will need to provide 4 hours advanced notice.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The impact to vessels of this regulation is that vessels which require openings during March, April, or November will need to provide 4 hours advanced notice. Based on the average logged openings during 2007-2013 during the months of March, April and November, the

bridge tender logs indicate that fewer than 20 vessels annually require openings in those months. This regulation change should not have an adverse effect on their transit because the bridge is able to open if the mariner provides at least 4 hours of advance notice.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The Coast Guard received a comment from a marina owner on Raccoon Creek regarding the month of April. The modification to the operating schedule for the Route 130 bridge over Raccoon Creek will not significantly impact the marina because vessels may still request an opening from the bridge during

the month of April with four hours notice. The regulatory text remains unchanged from the Notice of Proposed Rulemaking.

Furthermore, this rule amends the months of the year when the draw must open on signal when it is documented that vessel traffic is low. Vessels may still transit the bridge by requesting an opening with 4 hours advanced notice during the months of March, April, and November.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against

small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their

discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. This rule is

categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.741(a) to read as follows:

§ 117.741 Raccoon Creek.

(a) The draw of the Route 130 highway bridge, mile 1.8 at Bridgeport, shall open on signal:

(1) May 1 through October 31, from 7 a.m. to 11 p.m.

(2) At all other times, if at least four hours notice is given.

* * * * *

Dated: July 17, 2014

Stephen P. Metruck
Rear Admiral, United States Coast Guard
Commander, Fifth Coast Guard District

[FR Doc. 2014-18282 Filed 07/31/2014 at 8:45 am; Publication Date: 08/01/2014]